

The Honorable Lauren King

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of  
himself and other similarly situated,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the United  
States, *et al.*,

Defendants.

CASE NO. C17-00094-LK

**NOTICE OF MOTION AND  
DEFENDANTS' MOTION FOR  
RECONSIDERATION OF COURT'S  
SEPTEMBER 7, 2023 ORDER  
CONCERNING CERTAIN  
WITHHELD INFORMATION**

(Note on Motion Calendar for:  
November 13, 2023)

**INTRODUCTION**

Defendants seek reconsideration of the Court's ruling that Defendants may not seal certain documents, or portions thereof, that tend to reveal class members' CARRP status. *See* Dkt. 626 (Order Regarding Material to be Sealed and Designated as HSDs) at 15. In its September 7, 2023 order, the Court considered five categories of documents that Defendants sought to protect from public disclosure, including information tending to indicate whether the benefit applications of specific class members were vetted under CARRP. *Id.* at 5. The Court found compelling reasons to

1 protect material where the content included specific applications of CARRP to particular individuals.  
2 *Id.* at 15. But the Court held that information stating “in highly general terms” whether or not a  
3 particular applicant had been subjected to CARRP could not be sealed. *Id.* at 15.

4 It is of critical importance to the Government that information linking any class members  
5 with CARRP investigations – even in “highly general” terms – not be filed publicly. Defendants  
6 believe the Court erred in ruling to the contrary in the Sealing Order, and that this determination was  
7 plainly incorrect when measured against the prior rulings of the Court—which were based in part on  
8 *ex parte, in camera* declarations the Court reviewed at previous junctures in this litigation.

9 Accordingly, Defendants now respectfully request that the Court reconsider its rulings  
10 pertaining to this category of information. *Id.* at 14-15. With respect to Document Nos. 1, 3, 12, 13,  
11 15-23, and 25 (all of which were originally filed as HSDs),<sup>1</sup> Defendants request that the Court  
12 authorize the relevant redactions to remain in place. In these instances, the information in question  
13 draws links directly or contextually to an individual’s CARRP status. Defendants demonstrate that a  
14 review of the full case history establishes that release of information tantamount to revealing  
15 CARRP status in relation to any class member has been recognized as harmful to law enforcement  
16 and national security interests and treated with the utmost caution, such that it easily meets the  
17 “compelling reasons” standard to justify sealing.

## 18 ARGUMENT

19 Defendants request reconsideration of the Court’s CARRP-status ruling (Dkt. 626 at 15) on  
20 several grounds. First, while the Court’s September 7 Order distinguishes between general and  
21 specific information about CARRP status, this case’s history (as reflected in docketed filings and  
22 orders issued between 2017 and 2019) shows that the Court previously evaluated *both* categories of  
23 information as part of one continuum of risk and greatly restricted the dissemination of *any*  
24 information tending to reveal CARRP status as a result. In particular, the case docket contains a  
25 lengthy series of discovery-related motions, supporting declarations, and related rulings, which  
26 culminated in the Court’s order that any non-privileged information produced to Plaintiffs that tends

27 <sup>1</sup> With respect to Doc. Nos. 1, 15, 16, and 25, the Court deferred its rulings on the redacted material. However, because  
28 1) the content at issue conveys CARRP status in a manner that the Court may consider “generalized;” and 2) Plaintiffs  
object to Defendants’ proposed redactions, Defendants include these documents for reconsideration in the instant motion.

1 to reveal the CARRP status of *any* applicant, must be restricted to “attorneys’ eyes only” (hereinafter  
2 “AEO”). *See* Dkt. Nos. 148, 162, 176, 181, 183, and 274.<sup>2</sup> Thus, the Court’s current determination  
3 that information “stat[ing] in highly general terms” whether or not a particular class member has  
4 been vetted under CARRP is at odds with its prior approach of protecting the entire range of CARRP  
5 status information as part of one continuum of risk.

6 Second, because the Court’s AEO restriction was established after the Court’s *in camera* and  
7 *ex parte* review of classified and privileged declarations, the underlying justification for the AEO  
8 protection (including how granular or compelling its reasoning) may only be fully assessed in  
9 relation to that material.<sup>3</sup> Specifically, over the course of the litigation, the Court has imposed AEO  
10 restrictions encompassing the CARRP status of individual class members as identified in (1) the  
11 class list; and (2) certain A-files of class members. *See* Dkt. Nos. 183, 274. Prior to the issuance of  
12 those AEO orders, the Court reviewed a limited number of highly pertinent declarations authored by  
13 associated Government officials conveying the Government’s equities and detailing the attendant  
14 compelling law enforcement and national security interests in non-disclosure of any individual’s  
15 CARRP status. *See* Dkt. 162 at 4 (Court order “requir[ing] a random sampling of these [class]  
16 members with explanations why their names may not be produced to Plaintiffs,” and “at least fifty  
17 records from this random sample.”); Dkt. 176 at 1-2 (Defendants’ response, submitting the classified  
18 Declaration of Matthew D. Emrich, the unclassified but privileged Declaration of Tatum King, and  
19 the classified Declaration of Stephen P. Rees, which together comprised the 50-case sample with  
20 related explanations required by the Court); Dkt. 183 (Court order noting *in camera* and *ex parte*  
21 review of the Emrich, King, and Rees declarations); Dkt. 273 (granting Defendants’ motion to  
22 submit *ex parte* and *in camera* the declarations of Jay Tabb, Matthew Emrick, and Matthew Allen in  
23 association with Plaintiffs’ motion to compel redacted material from named Plaintiffs’ A files).

---

24 <sup>2</sup> The foregoing docket entries comprise, in more detail: Dkt 148 (Court’s Order granting in part and denying in part  
25 Plaintiffs’ motions to compel and Defendants’ motion for a protective order); Dkt. 162 (Court’s Order directing  
26 Defendants to submit a 50-case sample); Dkt. 176 (Defendants’ submission per Court’s Order requesting 50-case  
27 sample); Dkt. 181 (Court’s Order Granting Defendant’s motion for leave to submit declarations *ex parte* and *in camera*);  
28 Dkt. 183 (Court’s Order granting Defendants’ motion for AEO protective order); and Dkt. 274 (Court’s Order granting  
in part and denying in part Plaintiffs’ motion to compel, and Defendants’ motion for a protective order).

<sup>3</sup> The Court’s access to the classified and privileged declarations it reviewed in 2019 was facilitated through Classified  
Information Security Officer (“CISO”), W. Scooter Slade. *See* Dkt. 228 at 1.

1 Those rulings undeniably reflect the Court’s due consideration of the aforementioned  
2 declarations and the compelling reasons to limit the public disclosure of the information provided  
3 therein. *See* Dkt. 183 (noting that it was “appropriate to find in favor of Defendants” and directing  
4 the production of the class list under an AEO protective order); Dkt. 274 at 6 (extending AEO  
5 protection over unredacted copies of the Named Plaintiffs’ A-files produced in discovery). In sum,  
6 significant litigation over the importance of protecting information relating to CARRP status has  
7 already resulted in AEO protection, and the granularity and compelling nature of the reasons for  
8 those AEO restrictions can only be understood upon reviewing the material Defendants submitted in  
9 advocating for such a restriction.<sup>4</sup>

10 Third, the AEO restriction goes far beyond sealing the information from public view,  
11 because it also precludes access to the Plaintiffs themselves (as opposed to their counsel). In fact,  
12 while the parties’ stipulated protective order limited disclosure of confidential information to eight  
13 different categories of people, Dkt. 86 at 5-6 ¶ 4.2(a)-(i), including deposition witnesses and data  
14 processing services, the supplemental protective order permitted disclosure to a subset of only three:  
15 1) Plaintiffs’ attorneys of record; 2) Plaintiffs’ experts (as reasonably necessary to prepare testimony  
16 and reports); and 3) Court and Court personnel. *See* Dkt 182 at 2; 274 at 6. It further instructed  
17 Plaintiffs to “maintain the above-described information in a secure manner,” and prohibited  
18 transmission of files “over any e-mail or cloud-based sharing platform unless the transportation  
19 method utilizes appropriate encryption.” *See id.*

20 In its September 7 Order, this Court described the supplemental AEO protective order as one  
21 “prohibiting public disclosure of names, ‘Alien numbers,’ and the application filing dates” of certain  
22 class members. *See* Dkt. 626 at 3. While the AEO protection indeed achieved the foregoing, it  
23 accomplished much more. With respect to the CARRP status information, the AEO order also  
24 prohibited dissemination to all but those entrusted as attorneys and officers of the Court and  
25 mandated the utmost discretion in its handling and storage. The rationale underlying that additional

---

26 <sup>4</sup> Although not directly implicating AEO protection, the Court similarly evaluated the Plaintiffs’ request for production  
27 of A-file information after granting the Defendants’ motion to file two additional classified declarations. *See* Dkt. 181 at  
28 2 (granting Defendants’ motion to submit the classified declarations of Carl Ghattas and Matthew D. Emrich, and further  
finding the “Court is satisfied that it must review the classified documents” to decide whether to compel production of  
“unredacted A-files”).

1 extraordinary protection is thus plainly at odds with the notion that such information should later be  
2 published on the public docket. *Cf.* Dkt. 626 at 15.

3 Accordingly, the risks evaluated previously by the Court exceed the issue of sealing material  
4 from public view, and the regime instituted by the supplemental AEO protection implicitly  
5 recognizes the compelling interests at stake. *See United States v. Ressam*, 221 F. Supp. 2d 1252,  
6 1258 (W.D. Wash. 2002) (holding in a distinct, but analogous, criminal context there is “no right of  
7 access on the part of the public to documents to which the defendant himself has been denied  
8 access.”) (*citing United States v. Wolfson*, 55 F.3d 58, 60 (2nd Cir. 1995)). Indeed, when referencing  
9 the CARRP status of certain individuals, *see* Dkt. Nos. 451, 454-1, this Court sealed its own order,  
10 *sua sponte*, and cautioned the parties on “strict compliance” with the AEO directive and “severe  
11 sanctions if the parties do not follow it.” Dkt. 274 at 6. Accordingly, any content tending to reveal  
12 the CARRP status of class members compels protection from public view, as well as reconsideration  
13 of the Court’s September 7 order.

14 In addition to the foregoing, Defendants submit two additional points for consideration.  
15 First, because the continuum of risks pertaining to the revelation of CARRP status information can  
16 only be described in classified or privileged declarations, Defendants may not argue those points  
17 here, in an unclassified format. The Government does not propose to submit any argument *in*  
18 *camera* and *ex parte*, but instead believes the prior declarations, cited and referenced above, speak  
19 for themselves. However, Defendants will provide *ex parte* and/or *in camera* argument if the Court  
20 deems it necessary.

21 Second, and relatedly, the Court has ordered the party seeking reconsideration to “address  
22 whether it provided sufficiently specific information for the Court in the first instance, and if not,  
23 explain why such failure should not waive the objection.” Dkt. 626 at 20 and note 9. Defendants  
24 may have misapprehended the Court’s awareness of the full scope of risks outlined in prior filings  
25 (including *ex parte* and *in camera* filings) and orders related to public disclosure of CARRP status  
26 information. However, that error was attributable, at least in part, to an inclination to refrain from  
27 referencing classified material as a first resort – consistent with what Defendants believe is a  
28

1 broadly-shared preference against litigating with reliance upon classified or privileged information.<sup>5</sup>  
2 In sum, it was not Defendants' intention to waive their objection to public disclosure of the  
3 information in question based on the justifications previously filed with and reviewed by the Court,  
4 nor was it their understanding that their failure to reference these materials to the Court at this  
5 juncture of the lawsuit could cause such a result. Defendants believe they have not waived the  
6 objection as to any justifications previously filed with and reviewed by the Court and apologize for  
7 any unwarranted presumption otherwise.

8 Lastly, Defendants note that for ease of reference, the Court's review of the Defendants'  
9 proposed redactions of CARRP status information (comprised of portions of Doc Nos. 1, 3, 12, 13,  
10 15-23 and 25) is facilitated by the use of redaction boxes that either contain, or do not contain, red  
11 highlighting, as follows: (1) Defendants have indicated with red highlighting over the redaction  
12 boxes the information it proposes to seal (upon reconsideration), which the Court ruled was too  
13 generalized to justify sealing, and similar information (extrapolated from those rulings) appearing in  
14 documents on which the Court deferred ruling; and (2) Defendants have indicated with redaction  
15 boxes (containing no highlighting) information the Court ruled was specific enough to be redacted,  
16 as well as similar information (extrapolated from those rulings) Defendants propose for sealing that  
17 is contained in documents on which the Court deferred ruling. Ultimately, Defendants submit that  
18 any information red-boxed or red-highlighted in the instant submission should be sealed on the  
19 public docket.

## 20 CONCLUSION

21 For the foregoing reasons, Defendants respectfully request that the Court reconsider its  
22 rulings with respect to Doc Nos. 1, 3, 12, 13, 15-23, and 25 pertaining to information that tends to  
23 reveal that a class member has been vetted under CARRP, and order the continued protection of the  
24 challenged information by permitting the redaction of such information from documents filed on the  
25 public docket.

26 \_\_\_\_\_  
27 <sup>5</sup> In light of that preference, because Defendants believe the classified declarations speak for themselves, and because a  
28 single issue (CARRP status disclosure) underlies *all* redactions that are the subject of this reconsideration motion,  
Defendants will provide *ex parte* briefing only at the Court's direction. See September 7 Order at note 9 (directing that  
each proposed redaction be supported by a rationale for sealing).

Respectfully Submitted,

Dated: November 13, 2023

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General  
Civil Division  
U.S. Department of Justice

VICTORIA M. BRAGA  
Counsel for National Security  
National Security Unit  
Office of Immigration Litigation

AUGUST FLENTJE  
Special Counsel  
Civil Division

JESSE L. BUSEN  
Counsel for National Security  
National Security Unit  
Office of Immigration Litigation

ETHAN B. KANTER  
Chief National Security Unit  
Office of Immigration Litigation  
Civil Division

W. MANNING EVANS  
Senior Litigation Counsel  
Office of Immigration Litigation

TESSA GORMAN  
Acting United States Attorney

/s/ Brendan Moore  
**BRENDAN MOORE**  
Trial Attorney  
Office of Immigration Litigation

BRIAN C. KIPNIS  
Assistant United States Attorney  
Western District of Washington

LINDSAY M. MURPHY  
Senior Counsel for National Security  
National Security Unit  
Office of Immigration Litigation

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I hereby certify that on November 13, 2023, I electronically filed the foregoing via the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Brendan Moore  
BRENDAN MOORE  
Trial Attorney  
Office of Immigration Litigation  
450 5th St. NW  
Washington, DC 20001  
(202) 616-4018

Document No.	Detailed Document Description	Court's Determination	Location of Text for Reconsideration
1	Plfs' Brief in support of Motion for Summary Judgment	<b>Deferred; Defendants to provide version of document with proposed redactions highlighted so Court can efficiently identify portions proposed for redaction.</b>	Defendants seek reconsideration of red highlighted text on p. 31
3 (duplicates: Doc 56 & Doc 62)	Pasquarella Ex. 076 - Gairson Expert Report	<b>Named Plaintiffs do not need to be redacted unless it is a specific, granular explanation of CARRP in relation to them. Internal mechanics of CARRP, e.g., in paragraph 80, do not need to be redacted because they are highly generalized. Other paragraphs, e.g. paragraphs 81, 98, 100, 132, 133, 182 can be redacted as they discuss specific indicators or resources. Form N-400 worksheet can be redacted in whole. Exhibits D, E, G appear to be individualized applications of CARRP and may be filed under seal. See Dkt. No. 274 at 5-6.</b>	Defendants seek reconsideration of red highlighted text on pp. 28, 31-49
12	Pasquarella Ex. 088, Bajoghli Expert Report	<b>Proposed redaction in paragraph 12 is approved as it constitutes a individualized explanation of an application of CARRP.</b>	Defendants seek reconsideration of red highlighted text on p. 7
13 (duplicates: Doc 57 & Doc 63)	Pasquarella Ex. 089 - Ragland Expert Report	<b>Named Plaintiffs do not need to be redacted unless it is a specific, granular explanation of CARRP in relation to them. Internal mechanics of CARRP, e.g., in paragraphs 69, 71-72, 114-15, do not need to be redacted because they are highly generalized. However, the second half of paragraph 70 can be redacted as it reflects specific indicators, and paragraphs 74-82, 84-103, 123, 133 can be redacted because they reflect a specific application. The first redaction in paragraph 122 is overruled for failure to establish a valid concern; the second redaction may remain due to concerns regarding interagency communication and cooperation. Paragraph 136 and footnote 1 do not need to be redacted because they are highly generalized and Defendants have not established a valid concern. Exhibit C may not be redacted for failure to establish a valid concern.</b>	Defendants seek reconsideration of red highlighted text on pp. 46-49, 62-64
15	Plfs' Reply in support of Motion for Summary Judgment	<b>Deferred; Defendants to provide version of document with proposed redactions highlighted so Court can efficiently identify portions proposed for redaction.</b>	Defendants seek reconsideration of red highlighted text on pp. 15 & 48

Document No.	Detailed Document Description	Court's Determination	Location of Text for Reconsideration
16	Defs' Opposition and Cross-Motion for Summary Judgment	<b>Deferred; Defendants to provide version of document with proposed redactions highlighted so Court can efficiently identify portions proposed for redaction.</b>	Defendants seek reconsideration of red highlighted text on pp. 30 & 31
17	Busen Ex. 2 - Quinn 30(b)(6) Deposition Excerpt (Sept. 3, 2020)	<b>Defendants fails to establish valid concerns regarding all redactions except for page 4 line 18 to page 6 line 11, and except for reference to named Plaintiffs in the context of a specific, granular explanation of CARRP in relation to them.</b>	Defendants seek reconsideration of red highlighted text on pp. 4, 6, & 11
18	Busen Ex. 21 - Excerpts from A-file of a Named Plaintiff	<b>Defendants fail to establish a valid concern; can be filed publicly but with any necessary redactions under LCR 5.2(a), including photos.</b>	Defendants seek reconsideration of red highlighted text on pp. 2-30 (footers only)
19	Busen Ex. 23 - Excerpts from A-file of a Named Plaintiff	<b>Defendants fail to establish a valid concern; can be filed publicly but with any necessary redactions under LCR 5.2(a), including photos.</b>	Defendants seek reconsideration of red highlighted text on pp. 2-17 (footers only)
20	Busen Ex. 24 - Excerpts from T-file of a Named Plaintiff	<b>Defendants fail to establish a valid concern; can be filed publicly but with any necessary redactions under LCR 5.2(a), including photos.</b>	Defendants seek reconsideration of red highlighted text on pp. 2-12 (footers only)
21	Busen Ex. 27 - Excerpts from A-file of a Named Plaintiff	<b>Does not constitute application of CARRP and Defendants otherwise fail to establish a valid concern; can be filed publicly but with any necessary redactions under LCR 5.2(a), including photos.</b>	Defendants seek reconsideration of red highlighted text on pp. 2-9 (footers only)
22	Busen Ex. 28 - Excerpts from A-file of a Named Plaintiff	<b>Does not constitute application of CARRP and Defendants otherwise fail to establish a valid concern; can be filed publicly but with any necessary redactions under LCR 5.2(a), including photos.</b>	Defendants seek reconsideration of red highlighted text on pp. 2-19 (footers only)
23	Busen Ex. 29 - Excerpts from A-files of a Named Plaintiff	<b>Does not constitute application of CARRP and Defendants otherwise fail to establish a valid concern; can be filed publicly but with any necessary redactions under LCR 5.2(a), including photos.</b>	Defendants seek reconsideration of red highlighted text on pp. 2-27 (footers) and highlighted text in body on p. 24
25	Defs' Reply in support of Cross-Motion for Summary Judgment	<b>Deferred; Defendants to provide version of document with proposed redactions highlighted so Court can efficiently identify portions proposed for redaction.</b>	Defendants seek reconsideration of red highlighted text on pp. 6-8 & 13